PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

ACCIDENT INSURANCE.

The prevalence of accident insurance policies makes the decision of the Supreme Court of Georgia, in *Travelers' Ins. Co.* v. *Austin*, 42 S. E. 522, of special interest. In that case it is held that a paymaster of a railroad company traveling upon business of the company from station to station on the line of the company, and stopping between stations for the purpose of paying off employes of the company wherever they may be, is not, while so doing, a "passenger," within the meaning of a clause in a policy of accident insurance granting double indemnity to the insured if injured while riding as a passenger on a passenger car using steam as a motive power. A coach specially equipped and used as a pay car, and not a vehicle for the transportation of passengers, is not, in contemplation of the contract alluded to above a passenger car, although it had formerly been used as a passenger car, and was capable of being so used again. See *Berliner* v. *Insurance Co.*, 53 Pac. 922.

Passenger

ATTORNEYS.

A contract by an attorney for a contingent fee, where it is not champertous and the costs are to be paid and are paid, by the client, is valid, both under the Pennsylvania decisions and those of the federal courts: U. S. Circuit Court (E. D., Pennsylvania) in *Muller* v. *Kelly*, 116 Fed. 545. The champertous contract seems to be in the view of the court a contract where the costs and expenses are agreed to be paid by the attorney; it being permissible to make a contract for sharing the verdict in a certain ratio. See and compare with each other and with this case: *Ball* v. *Halsell*, 161 U. S. 80, and *Peck* v. *Henrich*, 167 U. S. 624. For the Pennsylvania decision, see *Perry* v. *Dicken*, 105 Pa. 83.

Contingent Fee

BANKRUPTCY.

Partnership

The U. S. District Court (E. D., Pennsylvania) holds *In re Mercur,* 116 Fed. 655, that where all the members of a firm are adjudicated bankrupts, but there has been no adjudication against the firm, the trustee appointed in the individual cases has no authority to interfere with firm assets, though all the cases were instituted simultaneously by the same creditor, and the same trustee appointed for all the partners. The court decides that in the contemplation of the Bankrupt Act of 1898, a partnership is a distinct entity, which requires a petition specifically directed against it, alleging an act of bankruptcy in which it is expressly involved, and resulting in an adjudication against the partnership itself, irrespective of and in addition to any that may be made against the individual members; and simultaneous proceedings against the individual members of a partnership do not necessarily bring the partnership into court, so as to authorize an amendment calling for an adjudication against it. See *Amsinck* v. *Bean,* 22 Wall. 395.

BILLS AND NOTES.

Usury

In *Coleman* v. *Cole,* 69 S. W. 692, the Court of Appeals at St. Louis, Mo., holds that where a promissory note, usurious as between the original parties, is discharged by a new note at a lawful rate of interest, which is received in payment of the old one, extending the time of the loan, and introducing a new party as maker of the second note, the usury of the first note is no bar to the enforcement of a chattel mortgage executed to secure the last note. Compare *Coleman* v. *White,* 69 Mo. App. 530.

CARRIERS.

Street Railways, Transfers

A passenger on a street car line on which the company issued transfers to its various connecting lines received from the conductor a transfer to a line other than the line to which he had requested one. Not noticing the mistake (apparently the transfer showed on its face that it was not good over the line desired, though the case does not state this except by inference) he presented it to the conductor on the line to which he had requested a transfer, who refused to accept it. The passenger declined to pay further fare and was ejected. Under

CARRIERS (Continued).

these facts the Supreme Court of Washington holds that the passenger was under no obligation to make a technical examination of the transfer slip, and since the company was responsible for the mistake of its agent, it was liable in substantial damages for the breach of contract occasioned thereby, though the conductor called upon to correct the mistake was not the one who had made it: *Lanshe* v. *Tacoma Ry. & Power Co.*, 70 Pac. 118. See *O'Rorcke* v. *Railway Co.*, 52 S. W. 872, and notice as taking a different view of facts very similar: *Frederick* v. *M. H. & O. R. Co.*, 37 Mich. 342.

Injury to Passenger, Liability of Lessor

The Supreme Court of North Carolina holds in *Phelps* v. *Windsor Steamboat Co.*, 42 S. E. 335, that the lessor of a steamboat, not being a *quasi* public corporation, having received no special privileges or benefits from the state, is not liable for injury to a passenger from the negligence of the lessee. The lease was to a company, of which Branning was president. "No liability," it is said, "attaches to said Branning, because he was president of said company, unless it were alleged and shown that the lease was collusive and colorable only, and a sham to avoid personal liability, and that he had in fact leased his own property to himself."

CLOUD ON TITLE.

Possession

The general rule that where the complainant's title to real estate is a legal one, he must be in possession in order to maintain a suit in equity to remove a cloud on title, is well established. In *Clem* v. *Meserole*, 32 Southern, 783, the Supreme Court of Florida holds that an exception to this rule exists where the land is wild, unimproved, and so unoccupied as not to destroy the constructive possession that follows the legal title; and the bill must allege such possession, or such unoccupied condition of the land, otherwise it is subject to demurrer for want of equity.

CONSTITUTIONAL LAW.

Privileges and Immunities

In Vermont a statute prohibits foreign insurance corporations from doing business in the state, unless they have filed certain statements with the Secretary of State and have had a license issued to them pursuant to a section which requires that the agents through

CONSTITUTIONAL LAW (Continued).

whom the business is transacted shall be residents of the state. The Supreme Court in *Cook* v. *Howland,* 52 Atl. 973, holds these provisions constitutional. A corporation, not being a citizen within the meaning of the Constitution of the United States in Article IV § 2 and Amend. XIV, § 1, it is held that the state had the right to impose the conditions on foreign insurance companies imposed by the statute, and had also the right, as incidental to the enforcement of such conditions, to prohibit such companies from doing business through any but resident agents, though citizens of another state were thereby entirely excluded from doing such business in the state. See, in connection with this case, *People* v. *Formosa,* 52 Atl. 974.

CONTRACTS.

Public Policy

A contract by which A. agrees to use the influence of his newspaper to secure B.'s nomination for a political office is void, as against public policy: Supreme Court of Vermont in *Livingston* v. *Page,* 52 Atl. 965. The illegality proceeds from its proximate relation to the election to the political office. "A newspaper is understood to present the views of some one connected with its management or views deemed consistent with some settled policy, and has a patronage and influence which are due to that understanding. As long as the editorial column is relied upon as a public teacher and adviser, there can be no more dangerous deception than that resulting from the secret purchase of its favor." Compare *Nichols* v. *Mudgett,* 32 Vt. 546.

FRAUDULENT CONVEYANCES.

Payment of Debt

In *Grainger* v. *Erwin,* 91 N. W. 592, the Supreme Court of Nebraska holds that a sale made by an insolvent debtor to one of his creditors in payment of a pre-existing debt will not be held void merely because the creditor had notice of an intent upon the part of the debtor to hinder, delay or defraud his creditors, provided the conveyance does not cover more property than is reasonably necessary to discharge the indebtedness existing. In order to avoid such a sale it is not sufficient to show that the creditor merely desired to secure his own debt. It must be shown that he participated in the fraudulent intent of his grantor. See *Chase* v. *Walters,* 28 Iowa, 460, and *Bank* v. *Carter,* 38 Pa. 446.

TRUSTS.

In re Totten, 77 N. Y. Supp. 928, it appeared that a depositor had eight or ten accounts in a savings bank, largely in excess in amount to what any one person could lawfully deposit on interest in one such bank, and though these accounts were nominally in trust the depositor had at all times treated them as her own. The N. Y. Surrogate's Court (Kings county) holds that notwithstanding the form of the deposit, no trust arises. See *In re Mueller,* 15 App. Div. 67, where it was held that an account opened substantially in this manner "constitutes an unequivocal declaration of trust in favor of the beneficiary," and compare the views of the Court of Appeals in *Beaver* v. *Beaver,* 117 N. Y. 421.

Evidence, Savings Bank Deposit

USURY.

The Supreme Court of Georgia holds in *McCall* v. *Herring,* 42 S. E. 468, that the taking of interest at the highest legal rate, in advance, by way of discount on short loans, in the ordinary course of business, is not usurious; but a reservation of interest in advance in an ordinary transaction of lending and borrowing money, for a period of five years, is usurious when the amount reserved and the amount contracted to be paid aggregate a sum which is in excess of the highest legal rate for the term of the loan. See, for a very able opinion bearing upon this question, *Clarke* v. *Howard,* 111 Ga. 242.

Time of Loan

WILLS.

In re Frost's Will, 77 N. Y. Supp. 879, it appeared that a testatrix executed a will in March, 1897, and another in September of the same year, and in April, 1900, on a separate sheet annexed to the March will, she executed a codicil, not referring to either will, but simply appointing a guardian for her grandchildren, which appointment was invalid, because their parents were living. The Surrogate's Court of Kings County holds that the codicil does not republish the March will as of the date of the codicil. The court, therefore grants probate to the September will. See and compare *In re Campbell's Will,* 170 N. Y. 84.

Republication